

1 TOMIO B. NARITA (SBN 156576)
tnarita@snllp.com
2 R. TRAVIS CAMPBELL (SBN 271580)
tcampbell@snllp.com
3 SIMMONDS & NARITA LLP
44 Montgomery Street, Suite 3010
4 San Francisco, CA 94104-4816
Telephone: (415) 283-1000
5 Facsimile: (415) 352-2625

6 Attorneys for Defendant
7 DB Servicing Corporation, erroneously
8 sued herein as Discovery Financial
Services

9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12
13 LAWRENCE WELCH,

14 Plaintiff,

15 vs.
16

17 DISCOVER FINANCIAL
18 SERVICES, an FDIC insured
19 corporation and DOES 1 through 100,
inclusive,

20 Defendants.
21
22
23
24
25
26
27
28

E-FILING

ADR
Filed

APR 03 2013

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

By Fax

PSG

CASE NO. CV 13-01481

NOTICE OF REMOVAL

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2 PLEASE TAKE NOTICE that defendant DB Servicing Corporation,
3 erroneously sued herein as Discover Financial Services ("Defendant"), a Delaware
4 corporation whose principal place of business is in Riverwoods, Illinois, hereby
5 removes to this Court the state court action described below.

6 1. On February 13, 2013, a complaint was filed against Defendant by
7 plaintiff Lawrence Welch ("Plaintiff"), in an action pending in the Superior Court
8 of the State of California in and for the County of Santa Clara, entitled *Welch v.*
9 *Discover Financial Services*, Case No. 113 CV 241061. A copy of the state court
10 Summons and Complaint, Civil Lawsuit Notice, Civil Case Cover Sheet and other
11 documents issued by the state court that was served on Defendant are attached
12 hereto as **Exhibit A**.

13 2. This removal petition is timely under 28 U.S.C. § 1446(b) because
14 Defendant was served on March 5, 2013.

15
16 **JURISDICTION**

17 3. This action is a civil action of which this Court has original
18 jurisdiction under 28 U.S.C. § 1331 and which may be removed to this Court by
19 Defendant pursuant to the provisions of 28 U.S.C. § 1441(b), because the
20 Complaint asserts claims against Defendant arising under 15 U.S.C. § 1681 *et seq.*
21 (the "Fair Credit Reporting Act"). See Exhibit A, Complaint, ¶¶ 1, 21, 24-33.

22 4. The Complaint was filed in the Superior Court of the State of
23 California, County of Santa Clara. Venue in the San Jose Division of this District
24 is proper. See 28 U.S.C. § 1441(a) (providing for removal "to the district court of
25 the United States for the district and division embracing the place" where the state
26 court action is pending); N.D. Local Rule 3-2(e) (state "all civil actions which arise
27 in the counties of . . . Santa Clara . . . shall be assigned to the San Jose Division").

28 5. Defendant is represented by the undersigned.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: April 3, 2013

SIMMONDS & NARITA LLP
TOMIO B. NARITA
R. TRAVIS CAMPBELL


By: 
R. Travis Campbell
Attorneys for Defendant
DB Servicing Corporation,
erroneously sued herein as
Discovery Financial Services

EXHIBIT A

SUM-100

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

Discover Financial Services, an FDIC insured corporation and DOES 1 through 100 inclusive

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

Lawrence Welch

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
RECORDED
FILED

2013 FEB 13 A 11:43

DAVID H. WELCH, PLAINTIFF
COURT OF SANTA CLARA COUNTY
BY

L. Talampas

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Santa Clara

191 North First Street
San Jose, CA 95113

CASE NUMBER
(Número del Caso) 13 CV 241061

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Elliot Gale, 333 West San Carlos Street, Suite 200, San Jose, CA 95110, 1-408-279-2688

DATE: FEB 13 2013
(Fecha)

Clerk, by
(Secretario)

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

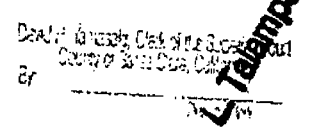
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify): Discover Financial Services
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): SCOTT J. SAGARIA (BAR # 217981) ELLIOT W. GALE (#263326) SAGARIA LAW, P.C. 333 West San Carlos Street, Suite 1750 San Jose, CA 95110 TELEPHONE NO.: 408-279-2288 FAX NO.: 408-279-2299 ATTORNEY FOR (Name): Lawrence Welch		FOR COURT USE ONLY <div style="text-align: center;">(ENDORSED) FILED</div> <div style="text-align: center;">2013 FEB 13 A 11:12</div> <div style="text-align: center;">  </div>	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 North First Street MAILING ADDRESS: CITY AND ZIP CODE: San Jose 95113 BRANCH NAME: Civil		CASE NUMBER: <div style="font-size: 1.5em; font-weight: bold;">13CV241061</div> JUDGE: DEPT:	
CASE NAME: Welch v. Discover Financial Services			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

Items 1-6 below must be completed (see instructions on page 2)

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (48) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	--

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve c. <input type="checkbox"/> Substantial amount of documentary evidence	d. <input type="checkbox"/> Large number of witnesses e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court f. <input type="checkbox"/> Substantial postjudgment judicial supervision
--	--

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive

4. Number of causes of action (specify): **Three**

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: February 7, 2013

Elliot Gale

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES**Auto Tort**

- Auto (22)—Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
 - Asbestos Property Damage
 - Asbestos Personal Injury/Wrongful Death
- Product Liability (*not asbestos or toxic/environmental*) (24)
- Medical Malpractice (45)
 - Medical Malpractice—Physicians & Surgeons
 - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
 - Premises Liability (e.g., slip and fall)
 - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
 - Intentional Infliction of Emotional Distress
 - Negligent Infliction of Emotional Distress
 - Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
 - Legal Malpractice
 - Other Professional Malpractice (*not medical or legal*)
- Other Non-PI/PD/WD Tort (35)

Employment

- Wrongful Termination (36)
- Other Employment (15)

Contract

- Breach of Contract/Warranty (06)
 - Breach of Rental/Lease Contract (*not unlawful detainer or wrongful eviction*)
- Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
- Negligent Breach of Contract/Warranty
- Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
- Collection Case—Seller Plaintiff
- Other Promissory Note/Collections Case
- Insurance Coverage (*not provisionally complex*) (18)
 - Auto Subrogation
 - Other Coverage
- Other Contract (37)
 - Contractual Fraud
 - Other Contract Dispute

Real Property

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
 - Writ of Possession of Real Property
 - Mortgage Foreclosure
 - Quiet Title
 - Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
 - Writ—Administrative Mandamus
 - Writ—Mandamus on Limited Court Case Matter
- Writ—Other Limited Court Case Review
- Other Judicial Review (39)
 - Review of Health Officer Order
 - Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

- Enforcement of Judgment (20)
 - Abstract of Judgment (Out of County)
 - Confession of Judgment (*non-domestic relations*)
 - Sister State Judgment
 - Administrative Agency Award (*not unpaid taxes*)
 - Petition/Certification of Entry of Judgment on Unpaid Taxes
 - Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

- RICO (27)
- Other Complaint (*not specified above*) (42)
- Declaratory Relief Only
- Injunctive Relief Only (*non-harassment*)
- Mechanics Lien
- Other Commercial Complaint Case (*non-tort/non-complex*)
- Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

- Partnership and Corporate Governance (21)
- Other Petition (*not specified above*) (43)
 - Civil Harassment
 - Workplace Violence
 - Elder/Dependent Adult Abuse
 - Election Contest
 - Petition for Name Change
 - Petition for Relief From Late Claim
- Other Civil Petition

ATTACHMENT CV-5012

CIVIL LAWSUIT NOTICE

Superior Court of California, County of Santa Clara
191 N. First St., San Jose, CA 95113

CASE NUMBER:

13CV241061**PLEASE READ THIS ENTIRE FORM**

PLAINTIFF (the person suing): Within 60 days after filing the lawsuit, you must serve each Defendant with the *Complaint*, *Summons*, an *Alternative Dispute Resolution (ADR) Information Sheet*, and a copy of this *Civil Lawsuit Notice*, and you must file written proof of such service.

DEFENDANT (The person sued): You must do each of the following to protect your rights:

1. You must file a written response to the *Complaint*, using the proper legal form or format, in the Clerk's Office of the Court, within **30 days** of the date you were served with the *Summons* and *Complaint*;
2. You must serve by mail a copy of your written response on the Plaintiff's attorney or on the Plaintiff if Plaintiff has no attorney (to "serve by mail" means to have an adult other than yourself mail a copy); and
3. You must attend the first Case Management Conference.

Warning: If you, as the Defendant, do not follow these instructions,
you may automatically lose this case.

RULES AND FORMS: You must follow the California Rules of Court and the Superior Court of California, County of Santa Clara Local Civil Rules and use proper forms. You can obtain legal information, view the rules and receive forms, free of charge, from the Self-Help Center at 99 Notre Dame Avenue, San Jose (408-882-2900 x-2926), www.sccselfservice.org (Select "Civil") or from:

- State Rules and Judicial Council Forms: www.courtinfo.ca.gov/forms and www.courtinfo.ca.gov/rules
- Local Rules and Forms: <http://www.sccsuperiorcourt.org/civil/rule1loc.htm>

CASE MANAGEMENT CONFERENCE (CMC): You must meet with the other parties and discuss the case, in person or by telephone, at least 30 calendar days before the CMC. You must also fill out, file and serve a *Case Management Statement* (Judicial Council form CM-110) at least 15 calendar days before the CMC.

You or your attorney must appear at the CMC. You may ask to appear by telephone – see Local Civil Rule 8.

Your Case Management Judge is: Honorable Kevin McKenney Department: 20

The 1st CMC is scheduled for: (Completed by Clerk of Court)

Date: 6-11-13 Time: 2:15 PM in Department: 20

The next CMC is scheduled for: (Completed by party if the 1st CMC was continued or has passed)

Date: _____ Time: _____ in Department: _____

ALTERNATIVE DISPUTE RESOLUTION (ADR): If all parties have appeared and filed a completed *ADR Stipulation Form* (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at www.sccsuperiorcourt.org/civil/ADR/ or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

WARNING: Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
ALTERNATIVE DISPUTE RESOLUTION
INFORMATION SHEET / CIVIL DIVISION

Many cases can be resolved to the satisfaction of all parties without the necessity of traditional litigation, which can be expensive, time consuming, and stressful. The Court finds that it is in the best interests of the parties that they participate in alternatives to traditional litigation, including arbitration, mediation, neutral evaluation, special masters and referees, and settlement conferences. Therefore, all matters shall be referred to an appropriate form of Alternative Dispute Resolution (ADR) before they are set for trial, unless there is good cause to dispense with the ADR requirement.

What is ADR?

ADR is the general term for a wide variety of dispute resolution processes that are alternatives to litigation. Types of ADR processes include mediation, arbitration, neutral evaluation, special masters and referees, and settlement conferences, among others forms.

What are the advantages of choosing ADR instead of litigation?

ADR can have a number of advantages over litigation:

- < ADR can save time. A dispute can be resolved in a matter of months, or even weeks, while litigation can take years.
- < ADR can save money. Attorney's fees, court costs, and expert fees can be reduced or avoided altogether.
- < ADR provides more participation. Parties have more opportunities with ADR to express their interests and concerns, instead of focusing exclusively on legal rights.
- < ADR provides more control and flexibility. Parties can choose the ADR process that is most likely to bring a satisfactory resolution to their dispute.
- < ADR can reduce stress. ADR encourages cooperation and communication, while discouraging the adversarial atmosphere of litigation. Surveys of parties who have participated in an ADR process have found much greater satisfaction than with parties who have gone through litigation.

What are the main forms of ADR offered by the Court?

- < Mediation is an informal, confidential, flexible and non-binding process in which the mediator helps the parties to understand the interests of everyone involved, and their practical and legal choices. The mediator helps the parties to communicate better, explore legal and practical settlement options, and reach an acceptable solution of the problem. The mediator does not decide the solution to the dispute; the parties do.
- < Mediation may be appropriate when:
 - < The parties want a non-adversary procedure
 - < The parties have a continuing business or personal relationship
 - < Communication problems are interfering with a resolution
 - < There is an emotional element involved
 - < The parties are interested in an injunction, consent decree, or other form of equitable relief
- < Neutral evaluation, sometimes called "Early Neutral Evaluation" or "ENE", is an informal process in which the evaluator, an experienced neutral lawyer, hears a compact presentation of both sides of the case, gives a non-binding assessment of the strengths and weaknesses on each side, and predicts the likely outcome. The evaluator can help parties to identify issues, prepare stipulations, and draft discovery plans. The parties may use the neutral's evaluation to discuss settlement.

Neutral evaluation may be appropriate when:

- < The parties are far apart in their view of the law or value of the case
- < The case involves a technical issue in which the evaluator has expertise
- < Case planning assistance would be helpful and would save legal fees and costs
- < The parties are interested in an injunction, consent decree, or other form of equitable relief

-over-

< **Arbitration** is a less formal process than a trial, with no jury. The arbitrator hears the evidence and arguments of the parties, then makes a written decision. The parties can agree to binding or non-binding arbitration. In binding arbitration, the arbitrator's decision is final and completely resolves the case, without the opportunity for appeal. In non-binding arbitration, the arbitrator's decision could resolve the case, without the opportunity for appeal, unless a party timely rejects the arbitrator's decision within 30 days and requests a trial. Private arbitrators are allowed to charge for their time.

Arbitration may be appropriate when:

- < The action is for personal injury, property damage, or breach of contract
- < Only monetary damages are sought
- < Witness testimony, under oath, needs to be evaluated
- < An advisory opinion is sought from an experienced litigator (if a non-binding arbitration)

< **Civil Judge ADR** allows parties to have a mediation or settlement conference with an experienced judge of the Superior Court. Mediation is an informal, confidential, flexible and non-binding process in which the judge helps the parties to understand the interests of everyone involved, and their practical and legal choices. A settlement conference is an informal process in which the judge meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations. The request for mediation or settlement conference may be made promptly by stipulation (agreement) upon the filing of the Civil complaint and the answer. There is no charge for this service.

Civil Judge ADR may be appropriate when:

- < The parties have complex facts to review
- < The case involves multiple parties and problems
- < The courthouse surroundings would be helpful to the settlement process

< **Special masters and referees** are neutral parties who may be appointed by the court to obtain information or to make specific fact findings that may lead to a resolution of a dispute.

Special masters and referees can be particularly effective in complex cases with a number of parties, like construction disputes.

< **Settlement conferences** are informal processes in which the neutral (a judge or an experienced attorney) meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations.

Settlement conferences can be effective when the authority or expertise of the judge or experienced attorney may help the parties reach a resolution.

What kind of disputes can be resolved by ADR?

Although some disputes must go to court, almost any dispute can be resolved through ADR. This includes disputes involving business matters; civil rights; collections; corporations; construction; consumer protection; contracts; copyrights; defamation; disabilities; discrimination; employment; environmental problems; fraud; harassment; health care; housing; insurance; intellectual property; labor; landlord/tenant; media; medical malpractice and other professional negligence; neighborhood problems; partnerships; patents; personal injury; probate; product liability; property damage; real estate; securities; sports; trade secret; and wrongful death, among other matters.

Where can you get assistance with selecting an appropriate form of ADR and a neutral for your case, information about ADR procedures, or answers to other questions about ADR?

Contact:

Santa Clara County Superior Court
ADR Administrator
408-882-2530

Santa Clara County DRPA Coordinator
408-792-2704

ALTERNATIVE DISPUTE RESOLUTION INFORMATION SHEET/ CIVIL DIVISION

SCOTT J. SAGARIA (BAR # 217981)
SJSagaria@sagarialaw.com
ELLIOT W. GALE (BAR #263326)
Egalec@sagarialaw.com
SAGARIA LAW, P.C.
333 West San Carlos Street, Suite 620
San Jose, CA 95110
408-279-2288 ph
408-279-2299 fax

Attorneys for Plaintiff

(ENDORSED)
FILED
2013 FEB 13 A 11:43
David A. Hensley, Clerk of the Court
County of Santa Clara, California
By L. Talampas

mpas

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA
UNLIMITED JURISDICTION**

CASE NO.:

13CV241061

COMPLAINT FOR DAMAGES:

LAWRENCE WELCH,
Plaintiff,

v.

DISCOVER FINANCIAL SERVICES, an
FDIC insured corporation and DOES 1
through 100 inclusive,

Defendants.

1. Violation of Fair Credit Reporting Act;
2. Violation of California Consumer Credit Reporting Agencies Act;
3. Violation of California Unfair Business Practices Act

COMES NOW Plaintiff LAWRENCE WELCH, an individual, based on information and belief,
to allege as follows:

INTRODUCTION

1
2 1. This action seeks redress for the unlawful and deceptive practices committed by the
3 Defendants in connection with their inaccurate reporting of a prepetition debt
4 discharged in bankruptcy. In particular, Defendants' conduct involves inaccurately
5 reporting the status of Plaintiff's discharged credit account as in "collection" to the
6 credit reporting agency Experian. In addition, Defendant failed to report the debt as
7 disputed to Experian. Plaintiff seeks monetary and declaratory relief based on
8 violations of Fair Credit Reporting Act, 15 U.S.C. § 1681s-2(b), California Consumer
9 Credit Reporting Act, California Civil Code §1785.25(a), and California Business and
10 Professions Code § 17200.

JURISDICTION AND VENUE

- 11
12 2. Plaintiff re-alleges and incorporates herein by this reference the allegations in each and
13 every paragraph above, fully set forth herein.
- 14 3. Plaintiff, Lawrence Welch (hereinafter "Plaintiff"), is an individual and currently
15 resides in the county of Santa Clara, California.
- 16 4. This venue is proper pursuant to California Code of Civil Procedure § 395.5.
- 17 5. This Court has jurisdiction over Plaintiff's allegations pursuant to California Code of
18 Civil Procedure § 410.10 et seq.
- 19 6. Plaintiff is a natural person and competent adult who at all relevant times in this
20 Complaint resided in the State of California.
- 21 7. Defendant Discover Financial Services (hereinafter "Creditor") is located at 2500 Lake
22 Cook Rd Riverwoods, IL 60015. Creditor collects debts on its own behalf throughout
23 the state of California.
- 24 8. Plaintiff is unaware of the true names and capacities of Defendants DOES 1 through
25 100, inclusive. Plaintiff is informed and believes and thereon alleges that each fictitious
26 Defendant was in some way responsible for the matters and things complained of
27 herein, and in some fashion, has legal responsibility therefore. When the exact nature
28 and identity of each fictitious Defendant's responsibility for the matters and things
herein alleged are ascertained by Plaintiff, Plaintiff will seek to amend this Complaint

1 and all proceedings to set forth the same, pursuant to California Code of Civil
2 Procedure 474.

- 3 9. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
4 herein, each of Defendant is, and at all relevant times herein was, the agent, employee,
5 and alter ego of each of the remaining Co-Defendants, and in committing the acts
6 herein alleged, was acting in the scope of their authority as such agents, employees, or
7 alter egos and with the permission and consent of the remaining Co-Defendants.

8 **PRE-LITIGATION CLAIM FILINGS**

- 9 10. On or about May 12, 2011 Plaintiff sent a written notice to Experian, Transunion, and
10 Equifax disputing the accuracy of the "collection" notation reported on Plaintiff's
11 discharged credit account. Pursuant to Section 1681i(a)(2) of the Fair Credit Reporting
12 Act, all three CRA's notified Creditor of Plaintiff's dispute. After receiving notice of
13 Plaintiff's allegations, Creditor corrected and updated the status of the credit account to
14 "discharged in bankruptcy." Creditor thereafter re-reported the status of the account as
15 in "collection" while also failing to report that Plaintiff disputed the account
16 information.

17 **GENERAL ALLEGATIONS**

- 18 11. Plaintiff re-alleges and incorporates herein by this reference the allegations in each and
19 every paragraph above, as though fully set forth herein.
- 20 12. On November 12, 2010 Plaintiff filed a voluntary Chapter 7 bankruptcy petition in the
21 United States Bankruptcy Court for the Northern District of California.
- 22 13. In the Schedules filed with the petition in this case and on the master mailing matrix
23 filed with the Clerk of this Court, an unsecured debt was listed on Schedule F in favor
24 of Creditor in the amount of \$532.00.
- 25 14. On March 11, 2011 Plaintiff was granted a discharge of all dischargeable debts
26 pursuant to 11 U.S.C. § 727. Creditor was noticed by electronic transmission of
27 Plaintiff's discharge on March 11, 2011. Since Plaintiff never re-affirmed Creditor's
28 debt during bankruptcy, Plaintiff alleges that this Discharge included the pre-petition
debt owed to Creditor.

- 1 15. On May 5, 2011 Plaintiff pulled credit reports from Experian, Equifax, and Transunion
2 to ensure accurate reporting. The reports indicates that Creditor reported a "charge off"
3 notation on Plaintiff's credit account to all three CRA's after entry of the discharge
4 order.
- 5 16. Plaintiff alleges the information was misleading and inaccurate. Plaintiff alleges the
6 "collection" notation was inaccurate because it suggests that the account Defendant still
7 has the ability to enforce the debt personally against Plaintiff. Plaintiff alleges that the
8 "charge off" notation was also inaccurate because it violates the industry standard for
9 credit reporting under the Metro 2 Format. Plaintiff alleges that upon entry of the
10 discharge order, Defendant instead should have reported a "no data" notation in the
11 payment history section of Plaintiff's credit reports.
- 12 17. On or about May 12, 2011 Plaintiff sent a letter to the CRA's Experian, Transunion,
13 and Equifax requesting a formal, full, and complete investigation of Creditor's account
14 with Plaintiff. Specifically, Plaintiff disputed the accuracy of the "charge off" notation
15 Creditor reported on the account after entry of the discharge order. Plaintiff alleges all
16 three CRA's sent notice of Plaintiff's dispute to Creditor.
- 17 18. On or about June 17, 2011 Plaintiff received reinvestigation reports from Experian,
18 Equifax, and Transunion. Plaintiff alleges the reports indicate Creditor corrected and
19 updated the status of the account to "discharged in bankruptcy."
- 20 19. On or about January 22, 2013 Plaintiff received subsequent credit reports from Equifax,
21 Experian, and Transunion. Plaintiff alleges the reports indicate Creditor re-reported the
22 status of the account as in "collections" to Experian while also failing to report that
23 Plaintiff disputed the account information.
- 24 20. To date, Creditor still refuses to correct Plaintiff's credit report despite being noticed of
25 the original bankruptcy and re-noticed of its inaccurate reporting from Experian,
26 Equifax, and Transunion.
- 27 21. The actions of Creditor as alleged herein are acts in violation of the Fair Credit
28 Reporting Act, 15 U.S.C. § 1681s-2(b).

22. The actions of Creditors as alleged herein are acts in violation of the consumer credit reporting agencies act California Civil Code § 1785.25(a).

23. The actions of Creditors as alleged herein are acts in violation of the California Business and Professions Code § 17200.

FIRST CAUSE OF ACTION

(Violation Of Fair Credit Reporting Act

15 U.S.C. § 1681s-2(b))

(Against Defendant Creditor and Does 1-100)

24. Plaintiff re-alleges and incorporates herein by this reference the allegations in each and every paragraph above, as though fully set forth herein.

25. Creditor, in the course of regular business, reports information to credit reporting agencies.

26. Plaintiff promptly disputed the accuracy of the "collection" notation with Experian, Transunion, and Equifax. All three CRA's sent notice of Plaintiff's dispute to Creditor pursuant to Section 1681i(a)(2) of the Fair Credit Reporting Act. Creditor was thereafter under a duty to reasonably investigate Plaintiffs dispute pursuant to Section 1681s-2(b).

27. Plaintiff alleges that the results he received from the CRA's indicate Creditor concluded that the account information was inaccurate following its investigation. Plaintiff therefore alleges that Creditor should have prevented any future misreporting to the CRA's pursuant to 15 U.S.C. § 1681s-2(b)(1)(E).

28. Plaintiff alleges Credit violated 15 U.S.C. § 1681s-2(b)(1)(E) by re-reporting the inaccurate "collection" notation to Experian.

29. Plaintiff is informed that Creditor separately violated Section 1681s-2(b) by failing to report to Experian that the account information was in dispute.

30. Creditor's failure to correct the previously disclosed inaccuracies on Plaintiff's credit report was intentional and in reckless disregard of its duty to refrain from reporting inaccurate information. Consequently, creditor willfully and negligently failed to comply with its duty to investigate Plaintiff's dispute under 15 U.S.C. § 1681(n) & (o).

1 31. As a direct and proximate result of Creditor's willful and untrue communications,
2 Plaintiff has suffered actual damages including but not limited to reviewing credit
3 reports from all three consumer reporting agencies, traveling to and from Plaintiff's
4 counsel's office, sending demand letters, continued impairment to her credit score,
5 denial of credit, and such further expenses in an amount to be determined at trial.

6 32. As a further direct and proximate result of Creditor acts state herein, Plaintiff incurred
7 pain and suffering, was impeded in seeking necessary products and services from
8 vendors, additional credit from other credit agencies, suffered humiliation,
9 embarrassment, anxiety, loss of sleep, emotional distress, and defamation of character.

10 33. Wherefore, Plaintiff prays for judgment as hereinafter set forth.

11 **SECOND CAUSE OF ACTION**

12 (Violation Of Consumer Credit Reporting Agencies Act

13 California Civil Code § 1785.25(a))

14 (Against Defendants Creditor and Does 1-100)

15 34. Plaintiff re-alleges and incorporates herein by this reference the allegations in each and
16 every paragraph above, as though fully set forth herein.

17 35. Creditor, in the ordinary course of business, regularly and on a routine basis furnishes
18 information to one or more consumer credit reporting agencies.

19 36. Creditor intentionally and knowingly reported inaccurate and false information.
20 Plaintiff alleges that Creditor re-reported an inaccurate "collection" notation to
21 Experian after entry of the discharge order. Plaintiff alleges Creditor's actions violated
22 California Civil Code § 1785.25(a).

23 37. Creditor had reason to know re-reporting the "collection" notation to Experian was
24 inaccurate. Plaintiff alleges that the disputes, the credit reporting resource guide, and
25 the results of its investigation provided Creditor with notice of its inaccurate reporting.

26 38. Creditor failed to notify consumer reporting agencies that the information Defendant
27 provided such agencies, was inaccurate before the end of 30 business days, in violation
28 of California Civil Code § 1785.25(a).

- 1 39. Creditor failed to correct inaccurate information provided to the agencies as described
2 hereinabove in violation of California Civil Code § 1785.25(a).
- 3 40. Creditor's communications of false information, and repeated failures to investigate,
4 and correct their inaccurate information and erroneous reporting were done knowingly,
5 intentionally, and in reckless disregard for their duties and Plaintiff's rights.
- 6 41. As a direct and proximate result of Creditors willful and untrue communications,
7 Plaintiff has suffered actual damages including but not limited to reviewing credit
8 reports from all three consumer reporting agencies, traveling to and from Plaintiff's
9 counsel's office, sending demand letters, continued impairment to her credit score,
10 denial of credit, and such further expenses in an amount to be determined at trial.
- 11 42. As a further direct and proximate result of Creditor acts state herein, Plaintiff incurred
12 pain and suffering, was impeded in seeking necessary products and services from
13 vendors, additional credit from other credit agencies, suffered humiliation,
14 embarrassment, anxiety, loss of sleep, emotional distress, and defamation of character.
- 15 43. Wherefore, Plaintiff prays for judgment as hereinafter set forth.

16 **THIRD CAUSE OF ACTION**

17 (Unfair Business Practices Act
18 California Business and Professions Code § 17200)
19 (Against Defendant Creditor and Does 1-100)

- 20 44. Plaintiff re-alleges and incorporates herein by this reference the allegations in each and
21 every paragraph above, as though fully set forth herein.
- 22 45. Plaintiff brings this action in individual capacity and on behalf of the general public.
- 23 46. Creditor at all times relevant to this Complaint, was engaged in the business of
24 collections and providing services on credit to qualified applicants.
- 25 47. Commencing on or about September 6, 2011 and continuing to the present, Creditor
26 committed the acts of unlawful practices as defined by Business and Professions Code
27 § 17200 and described in the above stated Causes of Action.
- 28

1 48. Creditor's acts and practices described above were unlawful under the California Civil
2 Code § 1785.25(a) and therefore constitute unlawful practices within the meaning of
3 Business and Professions Code § 17200.

4 49. These unlawful business practices of Creditor are likely to continue and therefore will
5 continue to injure Plaintiff by inaccurate record keeping, failure to correct inaccuracies
6 and erroneous dissemination of inaccurate information, and present a continuing threat
7 to the public.

8 50. Wherefore, Plaintiff prays for judgment as hereinafter set forth.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays for judgment as follows:

- 11 a. For preliminary and permanent injunctive relief to stop Defendants from
12 engaging in the conduct described above;
- 13 b. Award \$10,000 in statutory and actual damages pursuant to 15 U.S.C. § 1681n
14 and California Civil Code § 1785.31;
- 15 c. Award punitive damages in order to deter further unlawful conduct pursuant to
16 15 U.S.C. § 1681n; and California Civil Code § 1785.31
- 17 d. Award \$2,500 in civil penalties pursuant to California Business & Professions
18 Code § 17206;
- 19 e. Award attorney's fees and costs of suit incurred herein pursuant to 15 U.S.C. §
20 1681n & o; California Civil Code § 1785.31;
- 21 f. For determination by the Court that Creditor's policies and practices are
22 unlawful and in willful violation of 15 U.S.C. § 1681n, et seq.; and California
23 Business and Professions Code § 17200, et seq.;
- 24 g. For determination by the Court that Creditor's policies and practices are
25 unlawful and in negligent violation of 15 U.S.C. § 1681o
26
27
28


DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of this matter by jury.

SAGARIA LAW, P.C.

Dated: February 7, 2013

By:


Scott Sagaria, Esq.
Elliot Gale, Esq.
Attorneys for Plaintiff